Manitoba

Annual Report 1984 - 85

The Public Trustee

86-04158/

Manitoba

The Attorney General

Winnipeg, Manitoba CANADA
R3C 0V8

Her Honour Pearl McGonigal,
Lieutenant-Governor for the
Province of Manitoba

May it please your Honour:

It is my pleasure to present to your Honour the Annual Report of the Public Trustee for the fiscal year ending March 31st, 1985.

Yours sincerely,

Roland Penner, Q.C.
Attorney General

Manitoba

The Public Trustee

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Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
R3C 3L6

The Honourable Attorney-General
Government of Manitoba
Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Mr. Attorney,

In terms of the provisions of Section 13.2 of The Public Trustee Act, I submit this Third Annual Report for the period ending March 31st, 1985.

The Report of the Provincial Auditor dated August 29th, 1985 is attached hereto as Appendix "A".

Yours truly,

J. D. Raichura, Q. C.
Public Trustee

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1. General Observations

The period under report is no exception to the previous reports in terms of growth. As will be seen from the statistics herein, all aspects of office activity show a significant growth with the exception of the trust business. It is possible that the volume of this particular area of the business has now levelled off.

The increase in the value of assets under management over last year is from $62,019,101 to $71,222,983 representing an overall increase of 14.84 per cent. Similarly, the revenue for the year is up from $1,470,131 to $1,853,446 representing an increase of over 26 per cent. The Common Fund, the main investment vehicle of the estates under administration, rose from $41,761,000 to $49,344,599, an increase of over 18 per cent. Due to the Government's restraint policy, there was only a modest 4.2 per cent increase in the Office's annual budget. Clearly, there now exists a considerable imbalance between workload and available human resources and therefore one cannot say with any degree of confidence that there is no risk of exposure to liability for negligent or improper acts of estate administraiton.

There is no statutory or other legal directive as to the fiscal objective of the office and, accordingly, the profit of $230,000.00 was paid into the Consolidated Fund of the Province.

2. Powers of Attorney — a new dimension and a dilemma

The functions and responsibilities of the Public Trustee are statutorily expressed so as to provide the services of the Public Trustee for persons suffering "mental disorder" as defined in The Mental Health Act. In these cases, the Public Trustee has no choice but to provide his services to those mentally disordered persons who are either institutionalized or are under an Order of Supervision and who have no committee to act on their behalf.

However, situations arise in which a person, although not mentally disordered as provided by The Mental Health Act, is in need of assistance by reason of other serious disabilities or limited mental functioning due to age or illness and who have no one to turn to. Recognizing the underlying philosophy of his office, namely, to provide assistance to persons genuinely in need of help in asset management, the Public Trustee has, from time to time, accepted powers of attorney from such individuals.

In the years 1980 to 1984, the Public Trustee volunteered to act for a total of five individuals, possessed with estate, large and small, who had no other help available to them. However, for the period covered by this report, there has been an astronomical increase in the number of persons requiring assistance through powers of attorney, with the result that the Public Trustee accepted powers of attorney from 21 disabled individuals during the year.

Management of estates of persons under powers of attorney is more complicated and involved because such persons are mentally competent to question and sometimes even interfere with the mangement of their assets by the officials of the Public Trustee.

In offering his service to this segment of needy individuals, the Public Trustee has gone beyond his statutory responsibilities by providing his services on moral and humanitarian grounds. Without exception, all these individuals have estates, some with significant assets.

By providing these discretionary services, the Public Trustee has increased the workload on his limited resources. The large increase in the number of such cases during the year was completely beyond expectation. The serious dilemma that has arisen is that should the Public Trustee continue to accept such powers of attorney and, in view of lack of resources, thereby adversely affect the delivery of services in connection with his mandatory statutory duties?

There is no question that the statutory responsibility must take precedence over discretionary matters. In the result, the Public Trustee has no choice but to refuse acceptance of powers of attorney until such time that adequate resources to provide this discretionary service are available.

By not accepting powers of attorney, the Public Trustee will be giving up revenue from these matters. The 21 powers of attorney under administration are expected to generate a revenue of approximately $13,000.00 per annum.

3. Sterilization

The case of Eve v. Mrs. "E", popularly known as "the Eve case" was at long last heard by the Supreme Court of Canada on June 4th, 1985. After hearing arguments of the parties and the Interveners, including the Public Trustee of Manitoba, the Court reserved its decision. At the time of the writing of this report, judgment has not been rendered. At issue is the question of non-therapeutic sterilization of persons lacking capacity to give "informed consent". The law in this important area of public concern therefore remains clouded. The Supreme Court's slowness in rendering its decision in this matter is hopefully due to its importance to the Canadian society and not for lack of priority.

The Public Trustee's position as one of the Intervenents was to the effect that in the absence of statutory provisions, a superior Court of original jurisdiction, in our case the Court of Queen's Bench, may invoke its inherent parens patriae jurisdiction in order to allow non-therapeutic sterilization on behalf of a person unable to provide medical consent by reason of age or mental incompetence. It was further submitted that the standard of proof in such cases should be strict consisting of clear and convincing evidence.

In view of the Public Trustee's committeeship in the area of personal rights of his wards, the outcome of this appeal is important and is therefore eagerly awaited.

4. Guardianship of Person

The Fourth Conference on Aging held during the year at the University of Manitoba did lend impetus to the general demand for action in the area of abuse of the elderly. As is evident from the media coverage, the social problem of abuse of dependant adults has now gained national attention. Although the Public Trustee has guardianship of persons of individuals who are his wards, there is a feeling that this limited protection, which is available only to those who are found mentally disordered and who are placed under the committeeship of the Public Trustee, is not broad enough to take care of other adult dependants.

In this connection, it should be realized that the system we now have in Manitoba is more than what is available to the citizens of the other provinces of Canada, with the exception of Alberta.

There is evidence to suggest that the Government has the matter under consideration and that it expects to introduce appropriate legislation to deal with this social problem.

As reported previously, the office continues to play an effective role in providing assistance and support to the victims of financial and personal abuse of persons under its wardship.

5. Systems Study

Pursuant to the Service Request dated July 18, 1983, the Treasury Board approved expenditure for a study of the Public Trustee accounting system. In March, 1985, the Department's Information Systems Group commenced the requested study and hired an outside consultant for the purpose.

After many months of meetings, deliberations and study, the Systems Group has completed its task and is now in the process of submitting appropriate recommendation to the Treasury Board with respect to a full and effective computerization of the Public Trustee's System.

The Systems Group very quickly discovered numerous problems in the current operation. The existing system was implemented in 1974. It was designed to provide mechanical service in place of outdated hand posting system. The number of accounts have grown from 1700 in 1974 to over 5000 in 1985. Apart from the inherent limitation of the system in that it is unable to provide the required management data, it is inadequate to properly handle the exceptionally large growth in volume that currently exists. Further, the growth trend reported here will create additional demands on the system, which demand it is simply not able to handle.

It is hoped that the report and recommenadation of the Systems Group will result in speedy and appropriate changes in the accounting functions of the office.

The Public Trustee of Manitoba

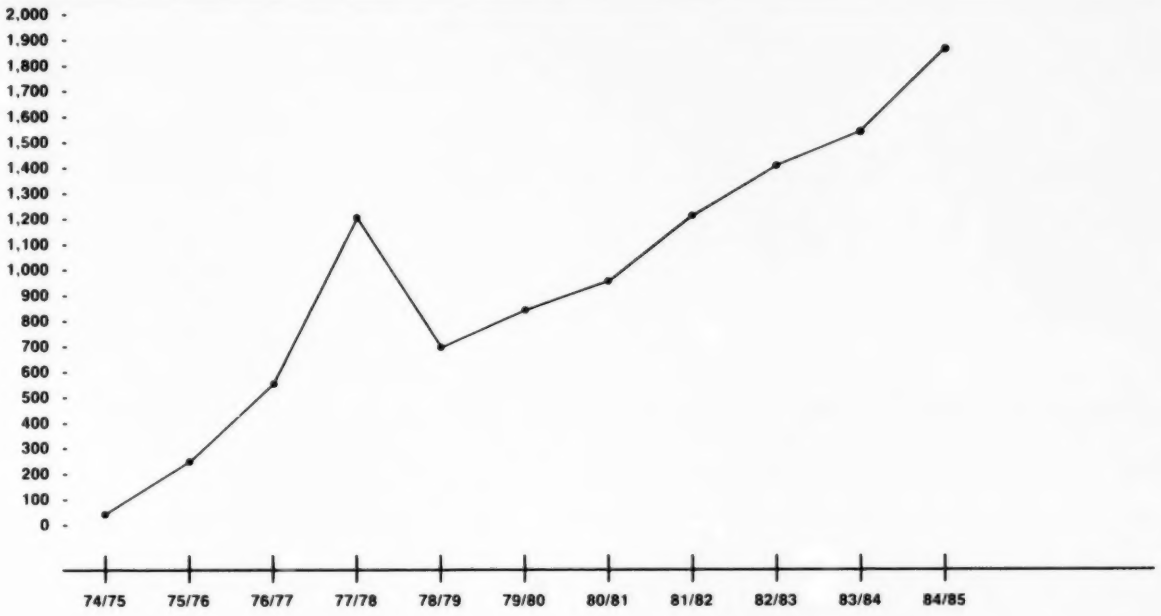
Dimensions

1984-1985

Number of Subordinate Staff:	55
Annual Operating Budget:	$1,623,400.00
Revenue:	1,853,400.00
Assets under Administration:	71,122,100.00
Number of Estate, Trust and Legal Files:	6847

The Public Trustee of Manitoba

Revenue Profile



Year	Revenue	Revenue as % of Expenditure
1974/75	93.4	26.9 %
1975/76	258.2	53.7 %
1976/77	549.3	99.2 %
1977/78	1,191.5*	186.5 %
1978/79	653.7	92.1 %
1979/80	819.7	100.6 %
1980/81	885.8	90.8 %
1981/82	1,170.5	102.5 %
1982/83	1,364.2	102.1 %
1983/84	1,470.1	96.55%
1984/85	1,853.4	113.84%

** Includes non-recurring collection of Prior Years Fees totalling $586.2.*

The Public Trustee of Manitoba

Comparison of Trust Division Activity

As at March 31

	1982	1983	1984	1985
Dollars under Administration:	$13,297.1	$16,165.2	$19,709.7	$20,971.8
Number of Accounts				
Deceased Estates:	730	752	759	739
Infant Trusts:	737	805	887	893
	1467	1557	1646	1632

The Public Trustee of Manitoba

Comparison of Mental Health Division Activity

As at March 31

	1982	1983	1984	1985
Dollars under Administration:	$30,253.4	$36,263.4	$42,288.8	$50,150.3
Number of Accounts with Assets:	3028	3065	3083	3163
Total number of accounts:	4661	4916	4816	4784

The Public Trustee of Manitoba

Comparison of Legal Department Activity

As at March 31

	1982	1983	1984	1985
Number of files at beginning of year:	253	254	326	364
Number of files opened:	250	348	344	322
	503	602	670	686
Number of files closed:	249	276	306	255
Number of files at year end:	254	326	364	431

Manitoba

Office of the Provincial Auditor
Report

The Public Trustee of Manitoba

We have examined the financial statements, being Exhibits A and B, of The Public Trustee of Manitoba for the fiscal year ended March 31, 1985. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

In our opinion, these financial statements present fairly the financial position of affairs of the estates and trusts under jurisdiction of the Public Trustee as at March 31, 1985 and the cash receipts and disbursements for the year then ended in accordance with the accounting policies stated in note 2 to the financial statements applied on a basis consistent with that of the preceding year.

August 29, 1985,
Winnipeg, Manitoba

F. H. Jackson, C. A.,
Provincial Auditor.

Exhibit A
The Public Trustee of Manitoba

Balance Sheet of estates and trusts under administration

as at March 31, 1985
(with 1984 figures for comparison)

Assets	1985	1984
Cash on hand and in bank:		
General	$ 433,247	$ 798,961
Accountable advance	1,983	4,718
	435,230	803,679
Expenditures recoverable from estates and trusts (Note 2 (a))	5,312	2,782
Common fund investments (Notes 2(b) and 7)	49,344,599	41,761,100
Term deposits, investment certificates and treasury bill, at par value	2,267,668	2,529,076
Government of Canada and other bonds, at par value	13,857,231	12,468,316
Shares of capital stock and mutual funds (Note 2(c))	1,818,683	946,067
Annuity contracts (Note 2(d))	100,441	100,023
Accounts receivable (Note 2(e))	73,302	85,003
Rentals receivable (Note 2(e))	2,053	2,524
Notes receivable, principal (Note 2(f))	110,784	105,468
Mortgages and agreements receivable (Note 2(f))	64,682	100,165
Interests in other estates (Note 2(g))	2,145	4,118
Real estate (Note 2(h))	3,140,853	3,110,780
	$71,222,983	$62,019,101

Liabilities	1985	1984
Liabilities of estates:		
Public Trustee, fees payable (Note 3)	$ 14,760	$ 13,070
Government of the Province of Manitoba:		
The Public Trustee accountable advance	7,500	7,500
Estates and trusts under administration: (Note 2)		
Excess of recorded value of assets over liabilities:		
The Mental Health Act	50,229,024	42,288,783
The Public Trustee Act	20,971,699	19,709,748
	$71,222,983	$62,019,101

Exhibit B
The Public Trustee of Manitoba

Statement of Receipts and Disbursements

for the year ended March 31, 1985
(with 1984 figures for comparison)

Receipts	1985	1984
Funds held by estates and trusts brought under administration	$ 5,552,455	$ 4,450,756
Realization of equities in other estates	706,121	579,015
Pensions, compensation and assistance	8,354,158	7,351,622
Sickness, disability and other insurance benefits	853,955	1,931,674
Collections on account of:		
Accounts receivable	74,439	90,091
Rentals and leases receivable	312,072	230,227
Mortgages and agreements receivable	27,283	22,311
	413,794	342,629
Sale of chattels	181,325	143,312
Sale of real estate	831,986	1,069,406
Interest — bonds and investment certificates	7,071,851	6,068,906
Dividends	64,029	37,238
Bank interest	8,314	6,877
Statutory fees collected (Note 4)	11,123	20,446
Total receipts, before sales or redemption of securities	24,049,111	22,001,881
Sale or redemption of securities	21,248,996	28,793,603
Cash on hand and in bank at beginning of year	798,961	216,651
	$46,097,068	$51,012,135

Disbursements	1985	1984
Payments on account of:		
Accounts payable discharged	$ 121,940	$ 110,075
Mortgages and agreements payable	26,081	37,147
Real estate purchases	29,855	16,045
	177,876	163,267
Maintenance:		
Maintenance incurred in hospitals prior to June 30, 1985	164,096	510,509
Board, room and other expenses (Note 5)	6,193,294	5,312,465
	6,357,390	5,822,974
Preservation of estates:		
Realty and income taxes	671,884	616,841
Insurance	26,013	24,954
Repairs	54,253	54,244
Sundry	516,362	386,229
	1,268,512	1,082,268
Support of dependents	60,259	96,988
Administration and passing of accounts (Note 3)	1,845,152	1,449,571
Burial expenses	454,334	404,590
Estates and trusts released from administration	6,195,410	4,759,105
Statutory fees remitted (Note 4)	11,123	20,446
Total disbursements, before purchase of securities	16,370,056	13,799,209
Purchase of securities	29,293,765	36,413,965
Cash on hand and in bank at end of year	433,247	798,961
	$46,097,068	$51,012,135

The Public Trustee of Manitoba

Notes to Financial Statements

March 31, 1985

1. **Role and Objective**

The Public Trustee acts on behalf of persons affected by various disabilities, mental disorders, age and death. The Public Trustee is considered to be an appointment of last resort and therefore provides a public service, generally, where there is no competent or acceptable person available to provide the required service.

2. **Significant Accounting Policies**

Statement of Receipts and Disbursements

The Statement of Receipts and Disbursements reflects cash transactions which have occurred during the year for estates and trusts under administration.

Balance Sheet

The Balance Sheet reflects the position on a modified accrual basis with the following exceptions:

A. **Assets**

All known assets are included in the Balance Sheet except for chattels which are accounted for in separate accounting records and accruals on investment earnings.

B. **Liabilities**

Liabilities are only recorded on the Balance Sheet where accounts are due to the Government of the Province of Manitoba, and in respect of mortgages, notes and agreements payable described in Note 2(i).

The net recorded value of the estates and trusts under administration is governed by the valuation criteria described on the Balance Sheet as well as the following evalution and accounting policies:

a) **Expenditures Recoverable from Estates and Trusts**

Expenditures recoverable from estates and trusts represent disbursements made on behalf of estates or trusts for which funds were not immediately available; these expenditures will be charged to the estates or trusts concerned in due course when funds become available. If funds do not become available, these expenditures are recovered from the Department of the Attorney-General appropriation.

b) **Common Fund Investments**

Investments of the common fund, established pursuant to Section 7.1(1) of The Public Trustee Act, are restricted to securities and loans authorized under The Trustee Act. Common fund investments are recorded at cost, adjusted for the amortization of premiums or discounts on purchase on a straight-line basis over the remaining term to maturity of the security. Earnings are distributed semi-annually to the individual estates and trusts on a pro rata basis.

c) **Shares of Capital Stock and Mutual Funds**

(i) **Mental Health and Infant Trusts**

The basis of valuation of shares assumed under administration prior to December 22, 1971 is at Valuation Day prices (market value as at December 22, 1971), except shares for which no Valuation Day price exists. Shares are then recorded at cost, if available, or at a nominal value of $1.00.

Shares assumed under administration since December 22, 1971 have been recorded at the market value as at the date of assumption or at a nominal value of $1.00 where market value is not readily available.

All shares purchased by the Public Trustee are recorded at cost.

(ii) **Estates of Deceased Persons**

Shares forming part of estates of deceased persons assumed under administration have been recorded at the market value as at the date of death. Shares purchased by the Public Trustee are recorded at cost. Where no market value exists, nominal values of $1.00 are used.

Shares recorded at Valuation Day prices (December 22, 1971), assumed under administration since December 22, 1971, and purchased by the Public Trustee, amount to $1,818,570 (1984 — $946,025), with the balance of the account representing share certificates of a nominal value of $1.00 each.

d) **Annuity Contracts**

Determinable receivables amount to $100,123 at March 31, 1985 (1984 — $99,751), with the balance of the account represented by receivables recorded at a nominal value of $1.00 each.

e) **Accounts Receivable and Rentals Receivable**

Determinable accounts receivable and rentals receivable amount to $74,819 at March 31, 1985 (1984 — $87,024), with the balance of the account represented by accounts and rentals receivables recorded at a nominal value of $1.00 each.

f) **Notes, Mortgages and Agreements Receivable**

Notes receivable and mortgages and agreements receivable reflect the amount of principal and interest due and unpaid at the time each estate was brought under administration, less any payments subsequently received. Interest due and accrued during administration is not recorded by the Public Trustee until such time as it is received.

g) **Interests in Other Estates**

Determinable interest in other estates amounts to $2,092 at March 31, 1985 (1984 — $4,062), with the balance of the account represented by interest in other estates recorded at a nominal value of $1.00 each.

h) **Real Estate**

Real estate is valued at a multiple of five times the assessed value on the property tax notice and amounts to $3,140,578 at March 31, 1985 (1984 — $3,110,528); the balance of the account, represented by burial plots, mines and mineral rights and mobile homes, are recorded at a nominal value of $1.00 each.

i) **Mortgages, Notes and Agreements Payable**

Mortgages, notes and agreements payable are recorded in instances where the possibility exists that payments may be made on account of these liabilities. Interest due and accrued during administration is not recorded until it is paid.

3. **Administration Fees**

Under Section 10 of The Public Trustee Act, the Public Trustee may determine reasonable charges based on the services provided to the estates and trusts under his administration. Charges are made annually on the aforementioned basis to each estate and trust on its anniversary date of enrollment with the Trustee, except those estates and trusts which do not have sufficient funds, where the charges are either reduced or not made.

The Government of the Province of Manitoba requested that the total costs of the Public Trustee's Office be fully recovered by means of these administration fees. These fees are remitted to the Government of the Province of Manitoba when funds become available in each estate and trust.

4. **Statutory Fees**

Under Section 84(3) of The Queen's Bench Act and Section 82 of The Surrogate Courts Act, the Public Trustee of Manitoba provides legal services for estates and trusts not under his administration. Fees for these services are recorded as receipts and remitted to the Government of the Province of Manitoba.

5. **Board, Room and Other Expenses**

Board, room and other expenses reflect payments made for current general living expenses, including clothing, comforts, medical, nursing home costs, etc., during periods of supervision, probation and hospitalization.

6. **Administration Costs**

Administration costs of the Public Trustee of Manitoba are paid out of appropriations of the Department of Attorney-General and are not reflected in these financial statements. Where appropriate, these costs are recovered from estates and trusts in a manner as explained in Note 3.

7. **Common Fund — Summary of Investments**

The investments of the Common Fund consist of the following:

	1985 Par Value	1985 Book Value	1984 Book Value
Term deposits and investment certificates	$ 7,300,000	$ 7,304,022	$ 6,908,284
Government of Canada bonds	33,810,500	34,067,999	26,849,743
Province of Manitoba bonds	4,150,000	4,141,293	4,137,590
Province of Ontario bonds	1,900,000	1,894,129	1,892,232
Ontario Hydro-Electric bonds	500,000	542,419	1,273,251
B.C. Housing and Employment Development Financing Authority bonds	700,000	700,000	700,000
Federal Business Development Bank Euro-Canadian debentures	700,000	694,737	—
	$49,060,500	$49,344,599	$41,761,100